

**ATTORNEY INSTRUCTIONS RE:**  
**MEANS TEST AND CLERK'S NOTICE RE: PRESUMPTION OF ABUSE**  
**11 U.S.C. §707(b)**

1. **New Filing Requirement:**

Individual Debtors under chapters 7, 11 and 13 of the Bankruptcy Code will now be required to complete and file a new form with financial information on it. For Chapter 7, this form will determine if a presumption of abuse arises.

2. **New or Amended Official Forms to Implement Requirement:**

**Three new Official Forms (by chapter):**

Chapter 7: **Form 22A** - Statement of Current Monthly Income and Means Test Calculation

Chapter 11: **Form 22B** - Statement of Current Monthly Income; and

Chapter 13: **Form 22C** - Statement of Current Monthly Income and Disposable Income Test Calculation

**Two Amended Official Forms:**

**Form 9A and 9C – §341 Notice, Chapter 7 Individual or Joint Debtor No Asset Case or Asset Case** (will include language regarding presumption of abuse).

3. **Amended Federal Rules to Implement Requirement:**

**FRBP 1007, 2002(f)(9) and 5008.**

4. **Amended Local Rules to Implement Requirement:**

**LBR 1007-1** (Amended to separate out which documents are due within two days and which are due within 15 days and to include the new filing document requirements including Forms 22A,B and C, the Presumption of Abuse checkbox, 60 days of Payment Advices, Form 19B re Petition Preparers, and the Certificate of Credit Counseling).

5. **Amended and New Local Forms to Implement Requirement:**

Amended Deficiency Notice Forms: Notice of Missing Documents and Notice of Dismissal if Not Timely Filed.

6. **New Noticing Requirement:**

Clerk is required to provide notice of whether or not the presumption of abuse arises under Chapter 7 within 10 days of filing. This notice will be accomplished using the 341 Meeting of Creditors Notice, which is amended to include a new section regarding Presumption of Abuse (Forms 9A and 9C).

7. **Non-Electronic Filing Procedure:**

(1) Complete the correct Form 22 (A, B or C, depending on chapter) and file with the petition and other schedules, statements. If the case is being filed under Chapter 7, complete the checkbox at the top of Form 22A indicating whether or not the presumption of abuse arises. This information will carry over to the 341 Notice.

(2) **If the correct Form 22 is not filed with the petition or the checkbox is not completed on Form 22A**, the 15 Day Notice of Missing Documents and Notice of Intent to Dismiss will issue identifying these missing items. In a Chapter 7 case, the 341 Notice will contain language that there was insufficient information filed to permit the clerk to make the presumption of abuse notice determination. Thereafter, if Form 22A is subsequently filed indicating that the presumption of abuse arises, a second notice to creditors will issue by the Clerk with this information. If the debtor fails to file the missing items within 15 days or any authorized extension, the case will be automatically dismissed without further notice.

8. **Procedure for Filings Made Electronically:**

Debtor/Debtor's Attorney Responsibilities:

- (1) Debtor/ Debtor's attorney should complete the proper form 22 (A-C), as appropriate. If a Chapter 7 case, the filer must also complete the checkbox at the top of Form 22A indicating whether or not the presumption of abuse arises.
- (2) When petition is filed electronically with the proper Form 22 completed, the CM/ECF filer will be prompted in the Case Opening event via a drop down box (Means Test Prompt) to indicate whether or not there is a presumption of abuse. This prompt will determine what language is included on the 341 Notice to creditors.
- (3) Case Upload - It is anticipated that the case upload event will transmit the new Forms 22 with all other initial filing forms and will make the appropriate selection for the means test prompt if a Chapter 7 case, but not yet confirmed on this.
- (4) If Form 22A is filed **after** the initial case opening, 3 new events are available, depending on chapter of case, and must be used to satisfy the missing documents requirement:

- (i) Chapter 7 Statement of Current Monthly Income and Means Test Calculation – Form 22A – will include the MeansTest prompt.
- (ii) Chapter 11 Statement of Current Monthly Income -Form 22B
- (iii) Chapter 13 Statement of Current Monthly Income and Disposable Income Calculation – Form 22C

These events must be used whenever Form 22 is filed after initial case opening (even if with other missing documents) in order to answer means test question. Satisfies 15 day Means Test deadline. If presumption is YES, will generate notice to creditors. (New form: Clerk's Notice of Statement of Presumption of Abuse).

#### **10. Quality Control Procedure for Electronically Filed Cases**

(1) Upon submission of the case by an approved electronic filer, the case manager will check the filing documents to determine if new Form 22 is filed. If this form is not filed with the petition, the case manager will issue the appropriate deficiency notice. If a chapter 7 case, the case manager will also check to see what flag was set by ecf filer. If Form 22A is missing, the flag should be set to MEANSU. If incorrect flag set by filer, the case manager will change the flag and docket a corrective entry.

(2) If Form 22A is filed with petition, the case manager will check the pdf of Form 22A to determine if the box selected matches the flag set. If not, the case manager will change the flag to correspond to the box selected on Form 22A and docket a corrective entry.

#### **11. New related Events:**

Motion for Exemption from Means Test

Order on Motion for Exemption from Means Test (if granted, changes Means test flag to MEANSNO and removes 707(b) flag, if present.

This exemption motion would be filed if the debtor is a disabled veteran and the indebtedness occurred primarily during a period during which he or she was: (1) on active duty or (2) performing a homeland defense activity. New checkbox for this declaration on Means Test Form 22A.

#### **12. New Filing Requirement upon Conversion of Case:**

Upon conversion of an individual case under Chapters 7,11 or 13, the converted debtor is required to file a new Form 22 consistent with the new chapter case – i.e. If case converts from Chapter 13 to 7, debtor must file Form 22A with means test information; if case converts from Chapter 7 to 13, debtor must file Form 22C with disposable income calculation. Debtors will have 15 days to file the correct Form 22 from date of conversion